16-000-0883

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 18 2016

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Committee's questions for the record following the September 29, 2015, hearing titled "Economy-wide Implications of President Obama's Air Agenda."

I hope this information is helpful to you and the members of the Committee. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,

Nichole Distefano
Associate Administrator

Enclosure

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The Honorable Barbara Boxer
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Boxer:

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Questions for the Record
Senate Committee on Environment and Public Works
Hearing entitled, "Economy-wide Implications of President's Obama's Air Agenda"
September 29, 2015

Acting Assistant Administrator Janet McCabe

Chairman Inhofe:

1. While NAAQS SIPs and attainment can take years, a new NAAQS is effective immediately for new air permits. Any delay in EPA's implementation guidance and updating air quality models makes it more difficult for businesses to expand and create jobs. Will EPA issue clear guidance to regions and States encouraging the use of near-term alternatives in any situation where the issuance of new implementation updates is delayed?

   Answer: Much of the existing implementation rules and guidance for prior ozone standards remains applicable for the newly-revised NAAQS. EPA has also stated that it intends to propose selected revisions to its implementation rules within one year after the revised ozone standards are established (80 FR 65436; October 26, 2015). Concurrent with promulgation of the final revised NAAQS, the EPA also issued an implementation memo (https://www.epa.gov/sites/production/files/2015-10/documents/implementation_memo.pdf) describing rules and guidance that remain current and applicable to the revised standards, and updates that we expect to complete for states' use in planning for the revised NAAQS. With respect to modeling, the EPA anticipates issuing a final rule to update its Guideline on Air Quality Models (40 CFR part 51, appendix W; proposed July 2015) in summer 2016, and intends to provide a transition period before any new guidelines become effective.

2. What is EPA's plan to ensure that PSD permits are consistent with state and municipal compliance deadlines?

   Answer: The CAA provides a one-year deadline for granting or denying a complete PSD permit application (§ 165(c)). In order to help states meet this deadline, the final ozone NAAQS rule contained a grandfathering provision to address certain pending permit applications received prior to the effective date of the new or revised NAAQS. The grandfathering provision allows such applications to be subject to the prior applicable NAAQS and not the 2015 Ozone NAAQS. Additionally, the EPA proposed a comprehensive update to the Guideline on Air Quality Models in Appendix W of 40 CFR part 51 (80 FR 45340, July 29, 2015). We intend to finalize the proposed rule in summer 2016. In conjunction with the changes to the Guideline the EPA also plans to provide additional information about PSD compliance demonstration tools to streamline the required demonstration that the proposed source will not cause or contribute to a violation of the NAAQS for fine particles and ozone.

3. What is EPA doing to alleviate permitting challenges to industry for the immediate change in the ozone NAAQS?

Answer: To avoid delays for permit applications already pending, in its final 2015 Ozone NAAQS Rule, the EPA provided a grandfathering provision for PSD permit applications that are sufficiently far enough along in the approval and issuance process on the effective date of a revised standard [80 FR 65292 at page 65431]. The provision allowed such pending permit applications meeting the qualification criteria in EPA's final rule to continue to be evaluated on the basis of the pre-existing NAAQS rather than the new or revised NAAQS. To facilitate implementation of the revised NAAQS, along with the final NAAQS rule, the EPA issued a memo "Implementing the 2015 Ozone National Ambient Air Quality Standards" (https://www.epa.gov/sites/production/files/2015-10/documents/implementation_memo.pdf). Additionally, the EPA proposed a comprehensive update to the Guideline on Air Quality Models in Appendix W of 40 CFR part 51 (80 FR 45340, July 29, 2015). We intend to finalize the proposed rule in summer 2016. In conjunction with the changes to the Guideline, the EPA also plans provide additional information about PSD compliance demonstration tools to streamline the required demonstration that the proposed source will not cause or contribute to a violation of the NAAQS for fine particles and ozone.

4. Since the new NAAQS takes effect 60 days after publication in the Federal Register, and expanding facilities have to comply immediate at the effective date of the new NAAQS, has EPA prepared guidance for these facilities on how exactly to obtain a preconstruction permit?

Answer: The final ozone NAAQS rule contained a grandfathering provision to address certain pending permit applications that were complete prior to the effective date of the new or revised NAAQS. The grandfathering provision allowed such applications to be subject to the prior applicable NAAQS and not the 2015 Ozone NAAQS. Other than this one provision, nothing about how a facility obtains a preconstruction permit has changed, and facilities will continue to follow the rules and guidance that have been issued by the permitting authority in their area. The EPA has proposed a comprehensive update to its Guideline on Air Quality Models in Appendix W of 40 CFR part 51 (80 FR 45340, July 29, 2015), which would have bearing on permit modeling for all NAAQS pollutants. We intend to finalize the proposed action in summer 2016. In conjunction with the changes to the Guideline, the EPA also plans to provide additional information about PSD compliance demonstration tools that could help streamline the required demonstration that the proposed source will not cause or contribute to a violation of the NAAQS for fine particles and ozone.

5. Due to your Agency's premature reconsideration of the current 2008 ozone standard soon after President Obama took office, EPA did not submit final nonattainment designations to states until May of 2012. EPA did not even publish state implementation plan guidelines until earlier this year. Given these simple facts, do you believe that states have had sufficient time to comply with the current standard?

Answer: The EPA and state co-regulators share a long history of managing ozone air

quality under the Clean Air Act (CAA), underpinned by a wealth of previously issued EPA rules and guidance. In particular for areas where states are still actively working toward attaining the 2008 ozone NAAQS, the EPA is committed to helping air agencies identify and take advantage of potential planning and emissions control efficiencies that may occur within the horizon for attaining the 2015 standards. We expect, however, that the vast majority of U.S. counties outside of California will meet the 2015 NAAQS by 2025 without taking additional action to reduce emissions.

6. The President is reported in the press recently as saying that "some of the concerns" raised by municipalities over "legitimate economic issues have to be considered." I agree. Does the President support amending the Clean Air Act to allow at least some consideration of these legitimate economic issues?

   Answer: While in setting primary and secondary standards that are "requisite" to protect public health and welfare the EPA may not consider the costs of implementing the standards, the NAAQS implementation process allows for consideration of costs. The two step process of a science-based NAAQS review every five years followed by implementation is a system that works. The history of implementing the Act shows that environmental protection and economic growth are compatible. Since its enactment in 1970, and subsequent amendment in 1977 and 1990—each time with strong bipartisan support—the CAA has improved the Nation's air quality and protected public health. Over that same period of time, the economy has grown over 200 percent while emissions of key pollutants have decreased nearly 70 percent. Forty-five years of clean air regulation have shown that a strong economy and strong environmental and public health protection go hand-in-hand. EPA is committed to ensuring that success will continue and is mindful of economic considerations in the guidance and rules we put in place to implement any new standards.

7. The President is also reported as having said that the potential benefits of a new standard in the number of lives saved and asthma cases averted is substantially higher than the costs. Does the President, and by extension the EPA, understand that a large portion of those benefits in the new standard is unrelated to ozone? Do you further understand that if you remove those non- ozone related benefits, the costs of the rule will exceed the benefits?

   Answer: The same pollutants that form ozone in the atmosphere also form fine particles. Reducing NOx emissions will reduce both ozone and fine particle formation. EPA's standard practice, consistent with long-standing OMB guidance, is to estimate, to the extent data and methods allow, all of the health benefits of a rule. That only makes sense, because those benefits are real. More information on the breakout of ozone and PM benefits can be found in the Regulatory Impact Analysis (http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0169-0057).

8. EPA's own analysis indicates that the vast majority of benefits claimed under its stringent ozone proposal actually come from reducing $PM_{2.5}$. Why are you issuing an ozone rule to reduce $PM_{2.5}$? Didn't EPA just issue a new standard for $PM_{2.5}$?

Answer: The same pollutants that form ozone in the atmosphere also form fine particles. Reducing NOx emissions will reduce both ozone and fine particle formation. EPA's standard practice, consistent with long-standing OMB guidance, is to estimate, to the extent data and methods allow, all of the health benefits of a rule. More information on the breakout of ozone and PM benefits can be found in the Regulatory Impact Analysis (http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0169-0057).

9. With a lowered standard, EPA's own data suggests many additional areas will end up in nonattainment. An analysis of the three most recent years of ozone data show that 499 counties would be out of attainment or in metropolitan areas that are out of attainment with a 70 ppb standard. Won't the actual number be even greater given that EPA will make the nonattainment designations by 2017?

Answer: It is too soon to say how many areas will be designated nonattainment. EPA anticipates making final designations by October 1, 2017, likely based on 2014-2016 air quality data. EPA's most recent estimates based on 2012-2014 air quality data show that only 241 counties with monitors violate the 70 ppb standard, out of 2,407 counties nationwide. The 2012-2014 data is available here: https://www.epa.gov/ozone-pollution/ozone-data-tables-1997-2008-and-2015-standards. Given the ongoing improvements in ozone air quality achieved over the past decade, we anticipate that this number will be even lower at the time of designations. The designations process begins with states, and any tribes that choose to do so, recommending the designation for all areas of the state (or any relevant areas in Indian country) and the boundaries for those areas.

EPA will respond to those recommendations by June 1, 2017 and identify where the agency intends to modify the state/tribal recommendations. States and tribes will have the opportunity to comment on EPA's response, and provide new information and analyses for the agency to consider before it takes final action.

10. Earlier this year, EPA asked states to begin withdrawing outdated state plan revisions. As of this summer, there were over 650 outdated state plan revisions languishing at EPA.
    a. How will a new standard affect the backlog problem?
    b. Doesn't the backlog of state plan submissions at EPA suggest that EPA is overwhelmed with just trying to implement the current standards, much less the new ones?
    c. What will happen to this backlog when you start adding the SIP revisions needed to implement the Clean Power Plan?

Answer: EPA has been working with states since 2013 on plans to reduce the SIP backlog and address the states' priority SIPs. This work has resulted in four-year plans developed with states to substantially reduce the historic backlog of SIPs by the end of 2017. The SIPs for the 2015 ozone NAAQS are not due to be submitted to EPA until between 2019 and 2021. The backlog of SIPs is not suggestive that EPA is overwhelmed with implementing the current NAAQS. The implementation of the Clean Power Plan (CPP) is not expected to negatively impact our efforts to reduce the SIP backlog. The CPP does not require SIP revisions, but rather one plan for each state.

11. Isn't it true that EPA has finalized decisions in the past with regard to ambient air quality standards that have differed from CASAC's recommendation?

Answer: Yes

12. EPA's modeling indicates that its ozone standard may actually increase mortality in cities like Houston. Can you please explain how this rule could end up increasing deaths in some areas?

Answer: The EPA has addressed this issue in both the preamble to the final rule and in the Response to Comment document. The complex chemical reactions that take place in the atmosphere and how these reactions, in combination with certain local weather conditions, can affect the formation and destruction of ozone near emission sources are described on page 65300 of the final rule (www.gpo.gov/fdsys/pkg/FR-2015-10-26/pdf/2015-26594.pdf). The issue is further explained on pages 175-176 of the Response to Comment document (https://www3.epa.gov/ttn/naaqs/standards/ozone/s_o3_2008_rc.html).

13. While CASAC said it made a "scientific" judgment in recommending a 70 ppb ozone standard, it called its recommendations for standards lower than 70 ppb "policy advice." Can you explain the difference?

Answer: The EPA discussed the CASAC's advice, including its scientific judgment and policy advice, on page 65360 of the final rule (www.gpo.gov/fdsys/pkg/FR-2015-10-26/pdf/2015-26594.pdf).

14. EPA chose to project the costs of its proposed ozone standard in one year, 2025, eight years after counties will be designated as nonattainment under the proposal.

    a. Does EPA's modeling capture the full cost of lost economic activity that counties in nonattainment areas will experience during those eight years?

    b. EPA chose to project the costs of its proposed ozone standard in 2025 since that would be the year in which most counties would have already attained the standards based on federal controls. Did EPA include in its cost, the many local controls that will be unnecessarily imposed? If EPA assumed longer compliance deadlines, shouldn't it write those compliance extensions into the final rule?

Answer: The EPA is providing for compliance flexibility similar to what has been provided under prior standards. The Clean Air Act provides for a range of actions to take place when an area is designated nonattainment. The specifics are discussed in further detail in section VII.5 of the preamble to the final rule (Nonattainment Area Requirements beginning on 80 FR 65437).

Consistent with Executive Order 12866, and OMB guidance, the EPA prepared a Regulatory Impact Analysis accompanying the final updates to the ozone NAAQS that shows the benefits and costs of illustrative control scenarios that states may choose in complying. Because states have flexibility in how to meet their goals, the actions taken to

meet the goals may vary from what is modeled in the illustrative scenarios. Specific details, including information about how costs and benefits are estimated for these illustrative scenarios are available in the RIA.

Existing and proposed federal measures like vehicle standards and power plant rules are leading to substantial reductions in ozone nationwide, which will help improve air quality and public health and help many areas meet the revised standards. We expect that the vast majority of U.S. counties outside of California will meet the 2015 NAAQS by 2025 without taking additional action to reduce emissions.

15. EPA's own data shows that many national wilderness areas and national parks would fail EPA's stringent proposed ozone standards. Given those readings, should we not expect that such standards could have serious consequences on even marginally-economically developed areas?

Answer: Ozone in national parks and wilderness areas is affected by routine natural sources such as soil and vegetation emissions, natural event sources such as wildfires and stratospheric ozone intrusions, and transport from economically well-developed areas, with the latter being the dominant contributor most of the time. We expect that any such areas violating the ozone NAAQS will be heavily influenced by upwind well-developed areas. In each type of area, we expect that emission controls in upwind well-developed areas, in combination with the application of the Exceptional Events Rule and other CAA provisions, will go far in allowing national parks and wilderness areas to attain the ozone NAAQS.

16. EPA's proposed ozone air standards will substantially increase nonattainment areas across the country. In fact, many of America's most pristine national parks would have failed those standards. Does a policy that pushes the Grand Canyon and Yellowstone National Parks into nonattainment make sense? If pristine wilderness areas flunk the standard. how would developed areas ever find a way to comply with the standard?

Answer: EPA notes that the most recent design value for Yellowstone National Park is well below the revised ozone NAAQS. Moreover, to the extent any undeveloped areas exceed the standard, EPA expects that the source of the ozone, and the focus of ozone control, will be upwind developed areas. There may also be isolated areas that experience high ozone levels due to exceptional events such as stratospheric intrusions and wildfires, but the CAA provides a mechanism for addressing such events. States have primary responsibility for determining what control strategies to employ to attain the standard. The attainment plan for each area is unique in that it considers the appropriate set of emissions controls necessary to successfully achieve a standard in that area based on the characteristics of elevated ozone levels in each area.

17. High levels of natural background ozone may cause many otherwise clean states, especially in the West, to be unable to meet EPA's stringent ozone proposal even with costly emission controls. EPA says it can deal with these concerns through its "exceptional events" program. Yet, since 2008, Utah has submitted 12 exception event

demonstrations, and EPA has yet to approve one. EPA's track record on exceptional events has been terrible – why should we think the exceptional events program can provide ozone regulatory relief to states with high background ozone?

Answer: EPA has been working closely with states, especially western states, over the past several years to improve the process for development and review of exceptional events requests. On November 10, 2015, the EPA Administrator signed a Federal Register notice proposing revisions to the Exceptional Events Rule (http://www.epa.gov/sites/production/files/2015-11/documents/ee_nprm_11-20-15_80_fr_72840.pdf). We also issued a Notice of Availability and request for public comment on draft exceptional events implementation guidance that addresses Exceptional Events Rule criteria for wildfires that influence ozone concentrations. The EPA intends to assess comments and finalize the rulemaking in the summer of 2016. This would be in advance of the date by which states, and any tribes that wish to do so, would be required to make area designation recommendations for the revised NAAQS (e.g., October 2016). The wildfire guidance is expected to be finalized in the same timeframe as the rule revisions.

The EPA prioritizes review of exceptional event demonstrations to support actions with near-term regulatory significance, so as to most efficiently use state air agencies' and the EPA's limited resources. For example, on May 28, 2014, the EPA concurred with the Wyoming Department of Environmental Quality (Wyoming DEQ) demonstration for a stratospheric ozone intrusion event submitted to support an approval of an attainment finding for a marginal nonattainment area for the 2008 Ozone NAAQS, due on July 20, 2015. EPA Region 8 consulted with and supported the Wyoming DEQ during the development of their exceptional event demonstration to ensure it was compliant with CFR requirements and contained adequate justification for EPA concurrence. Through an interagency workgroup, the EPA helped identify and develop diagnostic tools that assist with stratospheric ozone intrusion demonstrations. The EPA is committed to continue assisting states with exceptional event demonstrations in light of the proposed revisions to the Exceptional Events Rule.

18. How many Exceptional Events, Rural Transport, and International Transport submissions has EPA received since the 1997 standard was finalized? How many exceptions did EPA grant?

Answer: The Clean Air Act contains provisions that can assist states in ensuring background ozone does not create additional control obligations as they continue their work to improve air quality. If a state provides an adequate assessment or demonstration, there are a few types of CAA-authorized relief they can legally invoke, which are described in the ozone NAAQS proposal. As examples, an area may be able to rely upon the exceptional events provisions of the Act to exclude certain emissions data from consideration during the process of area designations under a revised NAAQS, which could impact whether an area is designated nonattainment. An area also may be able to rely on certain provisions of the Act addressing international emissions when making attainment demonstrations, which could limit their ultimate control requirements and any consequences for failing to attain by the area's attainment date. Finally, the Administrator can determine that certain qualifying nonattainment areas are Rural Transport Areas, thus eliminating the need for states to develop an attainment plan. All of these CAA-authorized provisions have been used in the past for implementing ozone standards.

For the 1997 and 2008 ozone standards, no states requested that the EPA consider a nonattainment area as a rural transport area.

The rural transport provision was last used for designations in 1991 for the 1979 ozone standards. At that time, four states requested that EPA consider areas as rural transport areas. After evaluating the requests, the EPA determined that the four areas qualified to be treated as rural transport areas. These areas are: Door County Area, WI; Edmonson County Area, KY; Essex County Area (Whiteface Mountain), NY; and Smyth County Area (White Top Mountain), VA.

The CAA section 182(h) Rural Transport Area provision provides the Administrator with the discretion to treat an ozone nonattainment area as a rural transport area if the area is not part of, or adjacent to, a metropolitan statistical area and emissions from within the area do not make a significant contribution to ozone concentrations in the area or in other areas. The EPA developed draft guidance in 2005, titled "Criteria For Assessing Whether an Ozone Nonattainment Area is Affected by Overwhelming Transport" that explains the kinds of technical analyses that states could use to establish that transport of ozone and/or ozone precursors into the area is so overwhelming that the contribution of local emissions to an observed 8-hour ozone concentration above the level of the NAAQS is relatively minor and determine that emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas. The document is available at http://www.epa.gov/scram001/guidance/guide/owt_guidance_07-13-05.pdf. The EPA will work with states to ensure all nonattainment areas eligible for treatment as rural transport areas are identified.

Section 179B of Clean Air Act allows the EPA to approve an attainment demonstration for a nonattainment area if: (1) The attainment demonstration meets all other applicable requirements of the CAA; and (2) the submitting state can satisfactorily demonstrate that "but for emissions emanating from outside of the United States," the area would attain and maintain the ozone standard. The EPA has historically evaluated these "but for" demonstrations on a case-by-case basis, based on the individual circumstances, the classification of the area and the data provided by the submitting state. These data have included ambient air quality monitoring data, modeling scenarios, emissions inventory data and meteorological or satellite data.

The EPA has approved 179B demonstrations for five nonattainment areas. To date, all demonstrations have involved emissions from Mexico. Three of these SIPs addressed PM10, one addressed CO, and one addressed ozone.

Because states submit exceptional events demonstration packages directly to their reviewing EPA regional office, there is no central or national tracking system for the submission and review of exceptional events requests. Some air agencies and EPA regions have developed their own processes, systems, and criteria to track exceptional event-related information. EPA is available to work with states to prioritize review of any exceptional event demonstrations that would materially impact an attainment determination or nonattainment area classification.

19. What is the exact timeline for issuance of the Exceptional Events guidance?

Answer: On November 10, 2015, the EPA Administrator signed a Federal Register notice proposing revisions to the Exceptional Events Rule (http://www.epa.gov/sites/production/files/2015-11/documents/ee_nprm_11-20-15_80_fr_72840.pdf). We also issued a Notice of Availability and request for public comment on draft exceptional events implementation guidance that addresses Exceptional Events Rule criteria for wildfires that influence ozone concentrations. The EPA intends to assess comments and finalize the rulemaking in the summer of 2016. This would be in advance of the date by which states, and any tribes that wish to do so, would be required to make area designation recommendations for any potential revised NAAQS (e.g., October 2016). The wildfire guidance is expected to be finalized in the same timeframe as the rule revisions.

20. EPA claims ozone health benefits at levels below background. How can EPA claim health benefits at ozone levels that are impossible to achieve?

Answer: EPA's approach for estimating the benefits of reducing ozone pollution is based on the best available science. EPA's approach for estimating health benefits has been reviewed and approved by two Congressionally-created independent review boards – the Clean Air Scientific Advisory Committee (CASAC) and the Advisory Council on Clean Air Compliance Analysis (Council). There is no scientific basis for ignoring health benefits (including avoiding premature death) that occur as a result of reducing ozone and PM pollution.

21. I understand that EPA does not exclude Mexican and Canadian ozone emissions when it determines background levels of ozone. What could a county in my district do to control emissions in a foreign country?

Answer: Under the CAA, states are not required to reduce emissions not within their control, including international emissions. The Clean Air Act contains provisions that assist states in ensuring ozone in their area that results from certain sources of emissions outside their control does not create additional control obligations as they continue their work to improve air quality. In cases where transported emissions from Mexico or Canada prevent an area from meeting the NAAQS, an affected state may seek a determination under CAA section 179B, which relieves states from imposing control measures on emissions sources in the state's jurisdiction beyond those necessary to address reasonably controllable emissions within the U.S. Alternatively, if the state demonstrates that the transported foreign emissions meet the requirements of Section 319 of the CAA and the Exceptional Events Rule, then the affected air quality monitoring data could be excluded from design value calculations, which, in turn, could lead to regulatory relief from an initial area designation as nonattainment under the 2015 Ozone NAAQS (or any other future NAAQS).

22. If EPA sets ozone standards at or below background concentrations, states will be left "controlling" natural or transcontinental emissions. What can a state do to control naturally occurring or transcontinental ozone?

Answer: Uncontrollable background concentrations of ozone, from sources like natural or foreign emissions, are not expected to preclude attainment of a revised ozone standard with a level of 70 ppb. Again, the Clean Air Act contains provisions that assist states in ensuring ozone in their area that results from certain sources of emissions outside their control does not create additional control obligations as they continue their work to improve air quality. If a state can provide an adequate assessment or demonstration to legally invoke statutory and regulatory relief, there are several CAA-authorized relief approaches that are described in the ozone NAAQS proposal. As examples, an area may be able to rely upon the exceptional events provisions of the Act (Section 319) to exclude certain emissions data from consideration during the process of area designations under the possible revised NAAQS, which could impact whether an area is designated nonattainment. An area also may be able to rely on the international emissions provisions of the Act (Section 179B) when making attainment demonstrations, which could limit their ultimate control requirements. Finally the Administrator can determine that certain qualifying nonattainment areas are Rural Transport Areas (Section 182(h)), thus eliminating the need for states to develop an attainment plan for those areas. All of these CAA-authorized provisions have been used in the past for implementing ozone standards.

23. In 1997, the Clinton EPA declined to set ozone standards at the level EPA is now considering in part because such standards would be so close to background levels that they would be "inappropriately targeted" in some areas. Have background levels changed since 1997?

Answer: Any ozone formed from sources or processes other than U.S. manmade emissions of nitrogen oxides (NOx), volatile organic compounds (VOC), methane (CH_4), and carbon monoxide (CO) is considered to be "U.S. Background" (USB) ozone. It is not possible to directly measure USB and determine its trend, but ambient data analyses have shown that mid-tropospheric ozone concentrations over western North America have been increasing over the past two decades at a rate of approximately 0.4 ppb/year. However, existing modeling analyses suggest that U.S. manmade emissions sources are still the dominant contributor to locations and times in the U.S. in which ozone exceeds 70 ppb. There is no evidence that USB ozone concentrations will prevent attainment of the 2015 ozone NAAQS.

24. The Clean Air Act's legislative history call's near-background air standards a "no-risk philosophy [that] ignores all economic and social consequences and is impractical." Do you agree with that statement?

Answer: The EPA has long recognized that the Clean Air Act does not require the NAAQS to be set at a zero-risk level. I am not familiar with the context of the legislative history quoted in your question.

25. EPA chose to project the costs of its proposed ozone standard to 2025, eight years after counties will be designated as nonattainment areas under the proposal. What consequences will those counties face from being designated nonattainment?

Answer: The Clean Air Act requires that within three years of EPA setting a new air quality standard, or revising an existing standard, EPA must designate areas as meeting the standards (attainment areas) or not meeting them (nonattainment areas) based on local air quality. The agency also may designate an area as unclassifiable, meaning there is not enough information to make a determination. Governors make initial designations recommendations, and EPA works closely with states and tribes as it determines initial designations and boundaries for nonattainment areas.

All states with nonattainment areas must develop emission inventories and implement a preconstruction permitting program designed to provide additional air quality safeguards for those areas. States with nonattainment areas classified as "Moderate" or higher must develop state implementation plans (SIPs) showing how the areas will meet the standards. These states also must adopt reasonable available control technology (RACT) standards for certain types of emission sources in the nonattainment. Emissions reductions from federal regulatory programs, such as the Tier 3 motor vehicle emissions standards, will provide a foundation that helps air agencies build successful strategies for attaining new ozone standards.

26. According to EPA, many of the emissions reduction controls needed to meet the stringent proposed ozone standard in the east and all of the reductions required in California have not even been invented yet. How does EPA explain the rationale of imposing this much burden on the American people when EPA itself doesn't even know how this rule can be accomplished?

Answer: Some of the pollution controls in EPA's Regulatory Impact Analysis are referred to as "unidentified controls." The term "unidentified" does not mean that all of these controls or measures are commercially unavailable or do not exist. These may be "unidentified" because we do not have enough data to estimate engineering costs or because we do not know what a state is planning to require to achieve specific emission reductions.

Based on the Agency's experience it is highly likely that new emissions controls or strategies will be developed and deployed over this time, but we do not currently have the data to include those technologies in our analysis.

27. The ozone proposal relies heavily on two exposure studies in which the overall results – by EPA's own benchmark – did not indicate a clinically-significant link between ozone concentrations below the current standard and health effects. EPA ignores these overall results and instead relies on data from just 9 study participants to claim there are health effects below the current standard. Yet at least 5 other study participants showed health *improvements* from being exposed to ozone. Shouldn't this caution EPA against over-interpreting outlier results from these studies?

The EPA does not agree with the question's characterization of the evidence from controlled human exposure studies. The EPA discussed its use of the results of controlled human exposure studies as the basis for the proposed decision starting on page 65317 of the final rule (www.gpo.gov/fdsys/pkg/FR-2015-10-26/pdf/2015-26594.pdf), responded to comments on the use of controlled human exposure studies in the section on the need for revision of the 2008 standard starting on page 65329 of the final rule, and responded to comments on the use of the controlled human exposure studies in the revisions to the level of the primary standard starting on page 65356 of the final rule.

28. Your Agency consistently touts the new body of scientific studies developed since the finalization of the 2008 standard. What studies were not included in the 2010-2011 reconsideration by the Obama Administration that are included in the development of this final rule?

Answer: The Administrator is confident that a primary standard with a level of 70 ppb will substantially improve public health protection across the country and will provide the adequate margin of safety the law requires - -including for children, who are one of the groups most at risk from ozone exposure.

The scientific evidence on the effects of ozone on public health and welfare expanded significantly since EPA last completed a review of the standards in 2008 -- more than 1,000 new studies. This includes new controlled human exposure studies where healthy people are exposed to ozone under controlled conditions. These types of studies provide the strongest evidence about health effects associated with ozone. The new studies that were considered are most fully described in the Integrated Science Assessment (http://www.epa.gov/isa/integrated-science-assessment-isa-ozone), and are summarized in the overview of the health effects evidence starting on page 65302 of the final rule (www.gpo.gov/fdsys/pkg/FR-2015-10-26/pdf/2015-26594.pdf).

29. How many counties in the U.S. currently contain EPA-designated ozone monitors?
    a. How many ozone monitors does the EPA maintain across the U.S.?
    b. When – if ever – will additional monitors be required?
    c. Please detail the changes being made to the ozone monitoring networks, including any changes in monitor location, redistribution, density, location requirements, etc.

Answer: In 2014, there were 813 U.S. counties (25%) with ozone monitors reporting data to EPA, and 2,407 counties (75%) without monitors, based on a data retrieval from Air Quality System conducted in July 2015. EPA's ozone monitoring network requirements are population-oriented, and thus the 813 counties with ozone monitors represent about 229 million Americans, or 73% of the U.S. population based on 2010 Census estimates. The total size of the ozone network is 1,339 monitors based on a data retrieval conducted in July 2015. On a national basis, the ozone network is very stable in terms of monitored locations. Most monitors operate for long-term periods of five to ten or more years and are

rarely moved unless a site lease is terminated by a hosting party or the location becomes unacceptable due to siting issues (e.g., surrounding trees have grown too tall). Monitors may occasionally be added or removed due to CBSA population change and/or changes in design value. These requirements are found in 40 CFR Part 58, Appendix D. Ozone networks may also change due to longer-term ozone trends, monitors being discontinued where readings are well below the NAAQS, and monitors being added in areas where concentrations may be newly approaching or exceeding the NAAQS.

30. When will EPA issues implementation guidance for the new standard?

Answer: When we issued the final revised NAAQS, the EPA also issued an implementation memo describing rules and guidance that remain current and applicable to the revised standards, and updates that we expect to complete for states' use in planning for the revised NAAQS. Much of the existing implementation rules and guidance for prior ozone standards remain applicable for the newly-revised NAAQS. The EPA has also stated that it intends to propose selected revisions to its implementation rules within one year after the revised ozone standards are established (80 FR 65436; October 26, 2015), i.e., by October 2016. We intend to issue the final implementation rule by October 2017. The EPA will continue to prioritize updates to other implementation guidance materials with input from co-regulators and other stakeholders.

31. When did EPA send the ozone rule to the Federal Register? Did EPA request a publication date? When does EPA expect the rule to be published in the Federal Register?

Answer: The rule was published on October 26, 2015.

Clean Power Plan

1. Congressional intent alongside agency practice has typically resulted in less stringent emission standards for existing sources than for new sources. Why, under the final rule , is the standard for existing power plants more stringent than the standard for new power plants?

Answer: This question is discussed in Section XI of the 111(b) preamble and in the "Legal Memorandum Accompanying Clean Power Plan for Certain Issues" (https://www.epa.gov/sites/production/files/2015-11/documents/cpp-legal-memo.pdf). This question is the subject of pending litigation in the D.C. Circuit and EPA addressed the question in the brief that it filed on March 28, 2016.

2. Recently, EPA Administrator McCarthy stated that you expect "the majority" of states to submit a State Implementation Plan. How many states have currently committed to submit a final SIP in 2016 and how many do you currently expect to request an extension?

Answer: On February 9, 2016, the Supreme Court stayed implementation of the Clean Power Plan pending judicial review. While the stay is in effect, the submittal requirements are suspended.

3. In order to get a two-year extension to 2018, states must provide "a demonstration of how they have been engaging with the public, including vulnerable communities, and a description of how they intend to meaningfully engage with community stakeholders during the additional time (if an extension is granted) for development of the final plan."
    a. How does the agency define "vulnerable communities"?
    b. How does the agency define "meaningful" engagement?

Answer: On February 9, 2016, the Supreme Court stayed implementation of the Clean Power Plan pending judicial review. While the stay is in effect, the submittal requirements are suspended.

In the final Clean Power Plan (https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22842.pdf), the EPA referenced examples of vulnerable communities broadly as low-income communities, communities of color, and indigenous populations that are most affected by, and least resilient to, the impacts of climate change, and are central to our community and environmental justice considerations. The EPA envisions meaningful engagement to include outreach to vulnerable communities, sharing information, and soliciting input on state plan development and on any accompanying assessments. Regarding meaningful engagement, the CPP references two guidance documents on page 64858 that provide further information on how to effectively engage vulnerable communities, including the EPA's May 2015 *Guidance on Considering Environmental Justice During the Development of Regulatory Actions* (http://www3.epa.gov/environmentaljustice/resources/policy/considering-ej-in-rulemaking-guide-final.pdf), and the document *Considering Environmental Justice in Permitting* (http://www3.epa.gov/environmentaljustice/resources/policy/plan-ej-2014/plan-ej-permitting-2011-09.pdf).

In addition, with respect to the initial submittals, on October 22, 2015, the EPA issued a Memorandum titled, "Initial Clean Power Plan Submittals under Section 111(d) of the Clean Air Act" (http://www3.epa.gov/airquality/cpptoolbox/cpp-initial-subm-memo.pdf) which provides additional assistance and information to states interested in seeking an extension of time in which to develop and submit a final plan under section 111(d) of the CAA.

4. Some Clean Power Plan supporters have suggested EPA can impose federal implementation plans before states have the opportunity to submit a state plan.
    a. What is the earliest date that EPA will consider imposing a federal plan?

Answer: On February 9, 2016, the Supreme Court stayed implementation of the Clean Power Plan pending judicial review. While the stay is in effect, the submittal requirements are suspended. Generally speaking, the EPA can put a federal plan in place only after a state has not submitted an approvable plan by the required deadline.

5. EPA has repeatedly stated it will not take punitive actions, including restricting highway funds, for states that do not submit satisfactory state plans under the Clean Power Plan.
    a. Is it true that even if a federal plan is imposed on a state, EPA can and will still delegate key aspects of implementation to the state? Please explain.
    b. If a Federal Implementation Plan (FIP) is imposed, will states be able to subsequently

submit complete or partial state plans that would replace the federal plan? Are there any limits to those options?

Answer: On February 9, 2016, the Supreme Court stayed implementation of the Clean Power Plan pending judicial review. While the stay is in effect, the submittal requirements are suspended.

As proposed, the federal plan rule describes the actions that EPA will take if a state does not submit an approvable plan or if a state's plan fails to meet the requirements of the Clean Power Plan. The affected EGUs in a state that does not develop a state plan sufficient to meet the requirements of the CPP will be subject to the requirements of a federal plan that would be finalized after the EPA made a finding that the state had failed to submit an approvable plan.

However, as proposed, even where a federal plan is put in place for a particular state, that state will still be able to submit a plan, which, if approved, will allow the state and its sources to exit the federal plan.

Furthermore, under the proposed federal plan, states may take delegation of administrative aspects of the federal plan in order to become the primary implementers, or submit partial state plans in order to take over the implementation of a portion of a federal plan. States with EGUs operating under a federal plan may adopt complementary measures outside of that plan to facilitate compliance and lower costs to the benefit of power generators and consumers.

6. A recent U.S. Chamber white paper suggested: "An approved [state plan] under the pending [Clean Power Plan] could effectively give NGOs a seat at the table for decisions now made by the State alone. For instance, an NGO might sue an electric utility that it believed was failing to dispatch electricity or generate renewable energy in compliance with a [state plan] — even if the State did not share that belief.... An NGO could potentially sue local construction companies or building owners who fail to achieve a [state plan's] energy-efficiency requirements."[1]
    a. Is there any way that state plans would not be subject to enforcement actions by environmental litigants like the Sierra Club?

Answer: On February 9, 2016, the Supreme Court stayed implementation of the Clean Power Plan pending judicial review. While the stay is in effect, states will not be subject to any enforcement actions.

7. The New York Times quoted EPA officials who were then crafting the Clean Power Plan as saying its legal interpretation is "challenging" and that "this effectively hasn't been done." Given the novelty, shouldn't we wait to see how the courts rule on this "challenging interpretation" that "hasn't been done"?

Answer: On February 9, 2016, the Supreme Court stayed implementation of the Clean Power Plan pending judicial review. The Court's decision was not on the merits of the rule. EPA firmly believes the Clean Power Plan will be upheld when the merits are

considered because the rule rests on strong scientific and legal foundations.

8. The Supreme Court's *UARG v. EPA* decision sends a clear warning to EPA that expansive use of authority faces substantial legal hurdles, "When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy,' we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.'" EPA is seeking to overhaul the country's entire electric grid by reinterpreting a law that has been on the books for over 40 years. Where did Congress speak clearly to give the Agency such powers?

   Answer: The EPA discussed its legal authority for the final Clean Power Plan in Chapter 4 of the final Clean Power Plan (80 Fed. Reg. 64,710 et seq.). Further, EPA's legal authority for the CPP is the topic of pending litigation in the D.C. Circuit and EPA addressed the question in the brief that it filed on March 28, 2016..

9. The Supreme Court's *UARG v. EPA* decision is clear that control technology "cannot be used to order a fundamental redesign of the facility," is "required only for pollutants that the source itself emits," and "may not be used to require reductions in a facility's demand for energy from the electric grid." Yet, the Clean Power Plan uses control technologies to redesign the entire electric grid, requiring controls well "outside the fence-line" of a power plant and often where no greenhouse gases are actually emitted. Is EPA concerned that the Clean Power Plan seems to be at odds with recent Supreme Court rulings?

   Answer: The EPA discussed its legal authority for the final Clean Power Plan, including for considering the interconnected nature of the electric grid, in Chapter 4 of the final Clean Power Plan (80 Fed. Reg. 64,710 et seq.). Further, EPA's legal authority for the CPP is the topic of pending litigation in the D.C. Circuit and EPA addressed the question in the brief that it filed on March 28, 2016..

10. Environmental groups have argued that section 111(d) does not allow emissions trading because sources must continuously demonstrate compliance with performance standards. Does EPA agree or disagree with these environmental groups – can EPA set up an emissions trading program under 111(d)?

    Answer: The final rule gives states the option to work with other states on multi-state approaches, including emissions trading that allow power plants to integrate their interconnected operations within their operating systems and their opportunities to reduce carbon pollution. EPA is committed to supporting states in the tracking of emissions, as well as tracking allowances and credits, to help implement multi-state trading or other approaches.

11. In 2010, EPA concluded that CO_2 emissions substantially larger than those from the Clean Power Plan had so little impact on global climate that "extrapolating from global metric to local effect with such small numbers . . . remain beyond current modeling capabilities." How, then. does EPA claim $20 billion in climate benefits from modeling that attempts to tie changes in

global carbon metrics to local effects?

Answer: The Regulatory Impact Analysis (RIA) for the rule provides detailed information on the benefits and costs of the Clean Power Plan. (http://www.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule-ria.pdf)

Ranking Member Boxer:

1. EPA has undertaken significant outreach to stakeholders on the Final Clean Power Plan. Can you describe in more detail the engagement EPA has had with states and other stakeholders since the final Clean Power Plan was signed? Can you also provide information on EPA's plans for outreach going forward?

   Answer: On February 9, 2016, the Supreme Court stayed implementation of the Clean Power Plan pending judicial review. The Court's decision was not on the merits of the rule. EPA firmly believes the Clean Power Plan will be upheld when the merits are considered because the rule rests on strong scientific and legal foundations. While the stay is in place EPA will take no action to implement or enforce the Clean Power Plan. As EPA has indicated, we will continue to work with states that want to work with us on a voluntary basis. Many states have asked us to move forward with our outreach and to continue providing support and developing tools, including the Clean Energy Incentive Program (CEIP) and the proposed model rules. EPA has received significant feedback on the CEIP and comment on the proposed model rules. We will move forward developing these actions in a way that is consistent with the stay.

2. I recently joined with colleagues on a letter to EPA regarding the Clean Energy Incentive Program. The program encourages renewable energy development but is focused on wind and solar power. There are many other renewable sources that could also help to reduce carbon pollution. Will EPA look at how this program can account for geothermal energy and other proven renewable power sources?

   Answer: The Clean Energy Incentive Program (CEIP) is aimed at encouraging early actions to reduce carbon pollution by offering additional incentives to applicable sources achieving clean energy generation or energy savings during 2020 and/or 2021. The EPA designed the CEIP specifically to target the incentives it creates on investments that benefit low-income communities. State participation in the program is optional. The applicability of the CEIP to wind and solar energy generation, and to demand-side energy-efficiency in low-income communities has been established in the final CPP, and is limited to those activities. As explained in the final rule, we limited the renewable portion of the CEIP to projects that we believed could be developed within the CEIP timeframe. However, we have heard from various members of the public an interest in including other forms of renewable energy and are considering how to respond. In its plan, a state may take advantage of a range of types of renewable energy, including geothermal energy, to meet its required CO_2 goals.

3. EPA's Clean Power Plan gives significant flexibility to states in achieving the emissions reductions in the final rule. What steps did EPA take to give states flexibility in how they plan

for and achieve the reductions needed by 2030?

Answer: The final Clean Power Plan mirrors the way electricity already moves across the grid. It sets standards that are fair, and consistent across the country - and that are based on what states and utilities are already doing to reduce CO_2 from power plants. And it gives states and utilities the time and broad range of options they need to adopt strategies that work for them. These features of the final rule, along with tools like interstate trading and emissions averaging, mean states and power plants can achieve the standards while maintaining an ample and reliable electricity supply and keeping power affordable. The flexibility of the rule allows states to tailor their plans to meet their respective energy, environmental and economic needs and goals, and those of their local communities.

Senator Wicker:

1. EPA Regional staff referenced state-specific spreadsheets and calculations to state DEQs during calls and e-mails. MS along with other states requested copies of these documents, but they were never provided. Why did EPA not provide the states with information they requested and needed to adequately review and comment on the proposed rule?

   Answer: Following the rollout of the proposed Clean Power Plan (CPP) to cut carbon emissions from existing power plants, we heard from stakeholders that an additional tool would help them understand each state's goal and the data and information released at proposal. We developed this excel-based tool in response to this suggestion. This "Goal Visualizer" tool did not provide any new information; instead, it presented existing publicly available data in an interactive format, using the steps outlined in the proposal and in the state goal computation technical support document. This resource was made publicly available on the Clean Power Plan webpage on 9/9/2014, well in advance of the close of the CPP proposed rule comment period (12/1/14). EPA has since provided an updated "Goal Visualizer" to reflect changes in the final Clean Power Plan. This new version is posted at http://www.epa.gov/cleanpowerplantoolbox.

   It should be noted that prior to posting the Goal Visualizer tool for the proposed CPP, some regional offices had independently developed spreadsheets to display the elements of state goal computations. In some cases these spreadsheets were shared with states. The Goal Visualizer tool was meant to provide a "one stop shop" to display goal development information for all states in a consistent format. In the case of Mississippi, MS DEQ requested the spreadsheet developed by EPA Region 4 on August 20, 2014. However, the spreadsheet was not sent in light of the forthcoming Goal Visualizer tool which was made available to all states a few weeks later.

2. After states commented on the Clean Power Plan that the renewable energy targets were unachievable when set using regional data rather than state-specific data, why did EPA continue to include and substantially increase the amount of proposed renewable energy?

   Answer: The analysis of the Best System of Emission Reduction (BSER) for the final CPP does include more use of new renewable energy than at proposal based on up-to-date information clearly demonstrating the lower cost and greater availability of clean

generation than was evident at proposal. It takes into account recent reductions in the cost of clean energy technology, as well as projections of continuing cost reductions. The rationale for quantifying the level of renewable electricity generation achievable under building block 3 is discussed on page 64729 of the final Clean Power Plan (https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22842.pdf) and in Chapter 4 of the Greenhouse Gas Mitigation Measures Technical Support Document (http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-37115).

3. South Mississippi Electric (SME) is a Generation & Transmission Cooperative serving over 419,000 homes and businesses throughout 55 counties in the State of Mississippi. One of SME's biggest concerns is the drastic and unproven shift to renewables in the final version of the Clean Power Plan that could require 21 percent of SME's generation to come from renewables by 2030. To meet the 2030 emissions rate, over 21 of these facilities would be required at a cost in excess of $2 billion. SME currently has just over $2 billion in assets that have been accumulated over about a 50 year time frame. How will people in my state be able to afford costs associated with the dramatic shift from fossil generation to renewable energy generation set forth in the Clean Power Plan?

   Answer: The final Clean Power Plan sets strong but reasonable and achievable standards for power plants, providing national consistency, accountability and fair goals for emissions reductions. The final Clean Power Plan provides guidelines for the development, submittal and implementation of state plans that establish standards of performance or other measures for affected power plants in order to implement the interim and final carbon dioxide CO2 emission performance rates. The flexibility of the rule allows states to reduce costs to consumers, minimize stranded assets and spur private investments in renewable energy and energy efficiency technologies and businesses. States can tailor their plans to meet their respective energy, environmental and economic needs and goals, and those of their local communities

4. Has EPA ever based performance standards on measures beyond the fence line of a source, as it does in the Clean Power Plan?

   Answer: No, although the EPA explained in section XVIII(B)(2) of the Legal Memorandum Accompanying Clean Power Plan for Certain Issues why the rationale for the BSER in the final Clean Power Plan appropriately follows the Clean Air Act, as well as specific examples of prior regulations in which EPA based the BSER on "outside-the-fenceline" measures, that is, measures that individual sources could take that were outside of their individual plants but that reduced emissions. The Legal Memorandum is available at http://www.epa.gov/sites/production/files/2015-11/documents/cpp-legal-memo.pdf.

5. Has EPA ever claimed authority section 111(d) of the Clean Air Act to order a facility to stop operating, as it does in the Clean Power Plan?

   Answer: No provision of the Clean Power Plan "orders a facility to stop operating." The Clean Power Plan does not tell states what their state plans must require of individual power plants, so by extension it does not have any requirements for what particular facilities will need to do as part of those plans. EPA is also not mandating the retirement of any coal plants. Each state will have the flexibility to design a program to meet the goal

in ways that reflect its particular circumstances and state-specific policy considerations. Power plants retire for many reasons, but the decision to retire a power plant is ultimately a market-driven business decision.

6. If EPA implements a lower ozone standard, many areas that are currently in attainment will not be. How will you help these jurisdictions navigate the complex and burdensome federal ozone standard bureaucracy and work to bring them back into attainment?

Answer: The EPA is committed to working with state, local and tribal air agencies to carry out the duties of air quality management for the 2015 ozone standards in a manner that maximizes common sense, flexibility and cost-effectiveness while abiding by the legal requirements of the Clean Air Act. The agency will work to ensure that all air agencies have adequate guidance, and new rules where necessary, to carry out Clean Air Act directives through the state implementation plan (SIP) process.

As required by the Clean Air Act, EPA anticipates making attainment/nonattainment designations for the revised standards by late 2017; those designations likely will be based on 2014-2016 air quality data. While current air quality data may not be a reliable indicator of likely nonattainment areas, 2012-2014 data indicate that many counties with design values above the 2015 ozone standards have previously been designated nonattainment for ozone, which suggests that there is already widespread experience with ozone nonattainment planning.

Thus, most states can build off work they are already doing to reduce pollution to help them meet the standards. However, for any area designated nonattainment for the first time, EPA will work closely with the appropriate air agency to ensure that they understand the SIP process and the statutory and regulatory requirements that apply to the area, and to share knowledge gained from other air agencies' experience in nonattainment planning for prior ozone NAAQS.

It is also worthwhile to note that EPA projections show that the vast majority of U.S. counties will meet the revised standards by 2025 without taking additional action to reduce emissions. Rather, existing and proposed federal rules, such as Tier 3 vehicle standards, Mercury and Air Toxics Standards, and measures to address the 2010 sulfur dioxide NAAQS will help states meet the standards by reducing ozone-forming pollution.

In addition, voluntary programs such as the Advance Program and ENERGY STAR help reduce emissions by encouraging states, counties, cities and tribes to take actions to maintain clean air in their communities and by reducing energy demand. Thirty-five areas in 18 states are participating in the Advance Program, implementing programs to protect air quality, such as minimizing congestion, improving public transit, reducing idling, increasing energy efficiency in buildings, and raising awareness about air quality. These programs are available now to any area or state looking to reduce ozone-forming emissions in an effort to avoid a nonattainment designation in the first place.

7. Did EPA use a fixed cap on costs for unknown controls in its latest cost projections of lowering the ozone standard, unlike in 2010 when EPA assumed that costs for "unknown controls" increased as more pollution was removed?

Answer: Some of the pollution controls in EPA's Regulatory Impact Analysis are referred to as "unidentified controls." The term "unidentified" does not mean that all of these controls or measures are commercially unavailable or do not exist. These may be "unidentified" because we do not have enough data to estimate engineering costs or because we do not know what a state is planning to require to achieve specific emission reductions. The EPA discusses unidentified controls in section 4.2 beginning on page 4-16 of the RIA accompanying the final NAAQS (https://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0169-0057).

Based on the Agency's experience it is highly likely that new emissions controls or strategies will be developed and deployed over this time, but we do not currently have the data to include those technologies in our analysis.

The Agency applied a constant, average cost per ton of $15,000/ton to capture total costs associated with the NOx emissions reductions achieved through unidentified controls. In addition, to explore how sensitive total costs were to the average cost per ton, the Agency employed alternative assumptions of $10,000 per ton and $20,000 per ton for the average cost. The average cost per ton is designed to capture total costs associated with emissions reductions from unidentified controls because the Agency expects that a portion of those total costs is likely at a value below the average cost per ton and a portion is likely at a value above the average cost per ton.

Senator Fischer:

1) When considering the appropriate level to set the ozone standard you agency "placed the most weight on human exposure studies" – at least according to the proposed rule. Isn't it true that only ONE of these studies – the Schelegle study – shows effects that may be considered adverse at levels below the current standard – which appears to show impact at 72 ppb. Aren't you concerned that other peer reviewed studies have called your strongest evidence into question?

Answer: The decision to set the level of the O3 NAAQS at 70 ppb was based on consideration of the full body of health evidence, including controlled human exposure and epidemiologic studies, quantitative analyses of ozone exposures and health risks, advice from CASAC, and public comments. The new evidence in this review includes controlled human exposure studies where healthy people are exposed to ozone under controlled conditions. These types of studies provide the strongest evidence about health effects associated with ozone, and several of these studies indicate the occurrence of respiratory effects following exposures to ozone concentrations below 75 ppb. The new studies considered are most fully described in the Integrated Science Assessment (http://www.epa.gov/isa/integrated-science-assessment-isa-ozone) and are summarized in the overview of the health effects evidence starting on page 65302 of the final rule (www.gpo.gov/fdsys/pkg/FR-2015-10-26/pdf/2015-26594.pdf). The EPA discussed its use of the results of controlled human exposure studies as part of the basis for the proposed decision starting on page 65317 of the final rule, responded to comments on the use of controlled human exposure studies in the section on the need for revision of the 2008 standard starting on page 65329 of the final rule, and responded to comments on the use of the controlled human exposure studies in the revisions to the level of the primary standard

starting on page 65356 of the final rule.

2) Are you familiar with the recent study coming out of NASA[2], which reports that the United States is importing ozone from China? Does the EPA – or anyone in the government - have a way to measure the amount of ozone we are importing from our competitors overseas? If we cannot measure the ozone we are importing from China – how can the EPA's so-called exceptional events exclusion work to hold states harmless for this pollution originating from China?

Answer: EPA is familiar with the Verstraeten et al. (2015) paper which looked at contributions of Asian transport to ozone levels aloft over the Western U.S. Multiple EPA documents, including the Integrated Science Assessment associated with the 2015 ozone NAAQS revision, have also discussed how international transport of ozone and ozone precursors can influence ozone levels in the U.S., not just above the surface but also at the surface. While there are ways to estimate how much of the ozone measured at a given location originates from foreign emissions sources (e.g., air quality modeling), there is no way to directly measure how much of the ozone at a given surface monitor is from China.

As described in the EPA's November 2015 proposed revisions to the "Treatment of Data Influenced by Exceptional Events" (the Exceptional Events Rule), to qualify for treatment under the Rule, a state would need to demonstrate that the transported foreign contribution meets the criteria of an exceptional event (e.g., clear causal relationship between the event and the monitored exceedance/violation, human activity unlikely to recur or a natural source, and not reasonably controllable or preventable). If the state demonstrates that the transported foreign emissions meet the requirements of Section 319 of the Clean Air Act (CAA) and the Exceptional Events Rule, then the affected air quality monitoring data could be excluded from design value calculations, which, in turn, could lead to regulatory relief from an initial area designation as nonattainment under the 2015 Ozone NAAQS (or any other future NAAQS). If the transported foreign emissions do not qualify for treatment under the Exceptional Events Rule and they influence concentrations in a nonattainment area, then the affected state may be able to use the international transport provisions provided under CAA section 179B, which relieves states from imposing control measures on emissions sources in the state's jurisdiction beyond those necessary to address reasonably controllable emissions within the U.S. Finally the Administrator can determine that certain qualifying nonattainment areas are Rural Transport Areas (Section 182(h)), thus eliminating the need for states to develop an attainment plan. All of these CAA-authorized provisions have been used in the past for implementing ozone standards.

3) Does the EPA have the discretion under the Clean Air Act to take into account the issue of background ozone when setting the standard? Since the EPA has the discretion to consider the dilemma posed by background ozone – did the agency take background ozone issues into account when setting the ozone standard?

Answer: The Clean Air Act directs the EPA to set NAAQS at a level requisite to protect public health with an adequate margin of safety and to protect the public welfare from any known or anticipated adverse effects of air pollutants. Since it is a public health

standard, all ground-level ozone, including background ozone, is relevant to what that level should be, because people breathe it all.

However, Congress established requirements for implementing the health-based NAAQS standards that recognize issues like background ozone and interstate transport to ensure that states are not responsible for emissions they cannot reasonably control. The Clean Air Act contains provisions that can assist states in ensuring background ozone does not create additional control obligations as they continue their work to improve air quality. If a state provides an adequate assessment or demonstration, there are a few types of CAA-authorized relief they can legally invoke, which are described in the final ozone NAAQS and the implementation memorandum that accompanied it. As examples, an area may be able to rely upon the exceptional events provisions of the Act to exclude certain emissions data from consideration during the process of area designations under a revised NAAQS, which could impact whether an area is designated nonattainment. An area also may be able to rely on certain provisions of the Act addressing international emissions when making attainment demonstrations, which could limit their ultimate control requirements and any consequences for failing to attain by the area's attainment date. Finally, the Administrator can determine that certain qualifying nonattainment areas are Rural Transport Areas, thus eliminating the need for states to develop an attainment plan. All of these CAA-authorized provisions have been used in the past for implementing ozone standards.

Clean Power Plan

4) Nebraska operates under a statutory mandate to provide low-cost and reliable public power. A recent study conducted by the Platte Institute, a nonpartisan "think tank" in Nebraska, found that the Clean Power Plan would cost Nebraskans an additional $3.5 billion for natural gas and renewable infrastructure, and raise residential electricity prices by 24 percent by 2020. Additionally, the Nebraska Department of Environmental Quality[3] stated that the Agency has not accounted for the state's significant investment in its existing electric generating units to comply with federal air quality regulations, a cost also borne by ratepayers.

How can Nebraska continue meeting its statutory public power obligations while also complying with the rule?

Answer: The final Clean Power Plan sets strong but reasonable and achievable standards for power plants, the providing national consistency, accountability and fair goals for emissions reductions. The final Clean Power Plan provides guidelines for the development, submittal and implementation of state plans that establish standards of performance or other measures for affected power plants in order to implement the interim and final carbon dioxide CO2 emission performance rates. The flexibility of the rule allows states to reduce costs to consumers, minimize stranded assets and spur private investments in renewable energy and energy efficiency technologies and businesses. States can tailor their plans to meet their respective energy, environmental and economic needs and goals, and those of their local communities.

There are various studies on the Clean Power Plan that reach different conclusions, and the EPA is not always aware of what assumptions underlie them. EPA's analysis shows that in 2030 the Clean Power Plan will achieve meaningful reductions in harmful carbon

pollution resulting in public health and climate benefits of $34 to $54 billion, far outweighing the costs of $8.4 billion. With an all-of-the-above approach, the Clean Power Plan encourages the growing shift toward a more sustainable system that recognizes the importance of reducing carbon pollution while maintaining reliability and a vibrant economy. As discussed in Chapter 8 of the final Clean Power Plan (80 Fed. Reg. 64,874 et seq.) both the extensive flexibility built into the final Clean Power Plan and multiple reliability-focused tools provided to states will ensure the continued reliability of the electricity system. Chapter 8 includes a detailed discussion of reliability-focused tools, including the reliability safety valve.

5) According to the Nebraska Public Power District, which services 86 of Nebraska's 93 counties, the EPA failed to show an emission limitation which is achievable or adequately demonstrated in the state of Nebraska. NPPD also stated that achieving a 6 percent efficiency rate for existing coal plans is "virtually impossible," and that it lacks the transportation capacity to run its gas-fired generators at 70 percent statewide as mandated by the rule[4].

Can you describe the calculations used when setting Nebraska's target reduction, particularly in relation to efficiency and utilization?

Answer: State goals are based on uniform emissions rates, which are premised on the three building blocks applied at the regional level as discussed in section VI of the preamble (https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22842.pdf). There are no source-specific technology or operating requirements for efficiency or capacity factor levels. The state goals reflect the uniform emission rates applied to the state's current (i.e., baseline) generation mix. That is, it reflects the historical fleet meeting the subcategory rates while operating at its historical generation level. This is discussed in detail in both section VII of the preamble and the CO_2 Emission Performance Rate and Goal Computation TSD (http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-36850).

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[3] Comments of the Nebraska Department of Environmental Quality on *Proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34830 (June 18, 2014).

[4] Comments of the Nebraska Public Power District on *Proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34830 (June 18, 2014).

16-000-6112

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 18 2016

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Committee's questions for the record following the February 24, 2016, hearing titled "Oversight of the Renewable Fuel Standard."

I hope this information is helpful to you and the members of the Committee. If you have further questions, please contact me or your staff may contact Matthew Davis in the EPA's Office of Congressional and Intergovernmental Relations at davis.matthew@epa.gov or at (202) 564-1267.

Sincerely,

Nichole Distefano
Associate Administrator

Enclosure

Senate Environment and Public Works Committee
Hearing entitled,
"Oversight of the Renewable Fuel Standard"
February 24, 2016
Questions for the Record for Acting Assistant Administrator Janet McCabe

Chairman Inhofe:

1. Corn ethanol was grandfathered into the RFS even though it does not meet the GHG requirements for the program. Given the tendencies of this Administration to favor products that emit few or no GHGs to advance its climate change agenda, when the RFS is turned over to EPA, what role will corn ethanol play in the RFS? Would it continue to receive a 15-billion-gallon mandate or would its place in the RFS diminish?

   Response: Congress established the RFS volume targets through 2022, and the EPA has not yet begun the process of determining the volume requirements for 2023 and beyond. We therefore cannot speculate as to what shape future policies will take. The law requires that the Administrator, when setting future volume requirements, take into account many analytical factors, including: impacts of the program on the environment (including air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply), energy security, future commercial biofuel production, infrastructure, cost to consumers and the cost to transport goods, and other factors (including job creation, price and supply of agricultural commodities, rural economic development, and food prices).

2. When you proposed the volumes for 2014, you did it by the mandated deadline. Please detail the reason for the 730-day-delay it took your agency to finalize those volumes?

   Response: The magnitude of the statutory volumes for 2014 introduced new and challenging issues regarding RFS program implementation. We laid out these challenges in our November 29, 2013, proposal for the 2014 standards. That proposal generated a substantial amount of input and dialogue. The process of responding to the comments and addressing the issues raised caused such a delay that by the time the proposal could be finalized, the capabilities of the market for 2014 had changed. At that point, a re-proposal was appropriate.

3. Ms. McCabe, do you agree with former White House official Ron Minsk that the current point of obligation in the RFS is a constraining factor on the amount of renewable fuel, including renewable fuel infrastructure, in the market?

Response: The statute provides that the RFS percentage standards are to be applicable to "refineries, blenders and importers, as appropriate." We considered how to implement this provision during the initial development of the regulatory program to implement the 2005 Energy Policy Act. The end result was informed by a full notice-and-comment process during that 2007 rulemaking. We also raised the issue for public comment and reconsidered the matter in the context of developing the 2010 rule implementing the 2007 Energy Independence and Security Act (EISA) amendments, and after considering comments on the issue, we decided to retain the same approach from the 2007 rulemaking and are currently using that approach. The EPA has recently received petitions for review, reconsideration, and rulemaking on this topic and is currently reviewing them.

4. Do you believe the existing point of obligation can have a significant impact on the supply of RINs in the market and which obligated parties have access to such RINs?

   Response: The EPA has recently received petitions for review, reconsideration and rulemaking on this topic and is currently reviewing them. At present we cannot speak to any specific impacts changing the point of obligation might have.

5. At a minimum, shouldn't EPA solicit comment from the public on the impact of changing the point of obligation given the changed market conditions from 2010, the high RIN prices, the blend wall, and other current issues with the RFS program that were not in existence in 2010?

   Response: The EPA has recently received petitions for review, reconsideration and rulemaking on this topic and is currently reviewing them. At present we cannot speak to any specific impacts changing the point of obligation might have and what our options are going forward. We note that many stakeholders have already submitted comments and input on this topic, and we have been actively meeting with them on this issue. Any proposed change to the point of obligation under the RFS program would go through a public notice-and-comment process.

6. Given that we are entering a period of low gasoline prices, how much can EPA increase the required RVO without raising gasoline prices?

7. Please inform the committee what higher levels of RVOs going forward is likely to do to gasoline prices?

8. What is the cost of these higher gasoline prices to consumers?

9. How to these costs compare to other efforts EPA has underway to lower GHG emissions?

   Response to questions 6-9: The cost of any particular RVOs will largely be dependent on the cost of the renewable fuels the market uses to satisfy the RVOs relative to the

petroleum based fuels they replace. Because a number of largely unpredictable factors can influence the cost of renewable and petroleum based fuels – including the price of oil, the price of renewable fuel feedstocks, and supply and demand for gasoline and diesel, we cannot speculate as to exactly how the RVOs will increase (or decrease) transportation fuel prices now or in the future.

EPA analyzed the costs of the fully phased-in program in 2010 using cost projections available at that time, and more recently estimated illustrative costs of different types of renewable fuels in the annual rulemaking which established the 2016 standards.[1,2]

10. Does EPA believe increasing the RVO above current levels, given projected gasoline demand, provide cost effective GHG reductions, i.e., how do you plan to address the "law of diminishing returns?"

Response: We are continuing to implement the RFS program as required by the Clean Air Act. This includes waiving the standards only to the degree authorized and appropriate in keeping with our statutory waiver authority. If the U.S. is to achieve its transportation GHG reduction goals, we will need to reduce GHG emissions not only by improving vehicle and engine efficiency, but also by reducing the GHG footprint of the fuels those vehicles and engines consume. In the 2010 RFS2 final rule, we conducted a detailed cost benefit analysis for the RFS program of the full volumes out through 2022 mandated by the statute, as well as an assessment concluding that the RFS program would provide important GHG benefits.

Senator Fischer:

11. Is the EPA on track to release the 2017 RVO proposal this spring/early summer?

Response: Yes, we are on track to issue the proposed 2017 RFS volume rule in the spring/early summer of this year.

12. As you are well aware, the 2014-2016 RVO final rule has been the subject of much debate regarding EPA's waiver authorities. EPA waived the RFS volumes for conventional biofuel on the basis of "inadequate domestic supply." However, the physical supply of conventional biofuels is clearly sufficient to satisfy the statutory volumes, especially when surplus RIN credits from over-compliance in previous years are considered. How can EPA suggest there is an "inadequate supply" of conventional biofuels when facts from the field- and your own data-show there is more than enough conventional biofuel available to meet the standards set forth by Congress?

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[1] 75 FR 14670, March 26, 2010.
[2] 80 FR 77420, December 14, 2015.

Response: We provided a full explanation for our exercise of our waiver authorities as part of the 2014-2016 rulemaking (80 FR 77419, December 14, 2015). As discussed in more detail there, we have focused not only on production, but also on how much biofuel can be *supplied to the consumer.* And that's where we feel that we must consider the real-world limitations to increased ethanol use. For the reasons set forth in the final rulemaking, we do not think it's responsible to set the volumes at statutory levels – the volumes in the statute have proven not to be feasible on the timeline Congress envisioned, particularly given the significant shortfalls in cellulosic biofuel production.

13. EPA's final rule states clearly that nearly 2 billion surplus RIN credits are available in the marketplace as a result of oil companies blending more biofuel than required in previous years. These RIN credits represent actual gallons of renewable fuel. But the Agency omits those credits from its calculation of the supply to meet RFS requirements. Why?

    Response: As discussed in the final rulemaking, we considered the likely volume of carryover RINs available in the 2014-16 time period, and decided not to intentionally set the volume requirements at levels that would require a drawdown in the collective bank of carryover RINs. This rulemaking explains our assessment that the availability of a collective bank of carryover RINs provides multiple program benefits, including, for example, fluidity in the RIN market and the ability for obligated parties to comply even in the event of unforeseen circumstances.

14. With lower gasoline prices, we continue to see steady increases in gasoline consumption. In fact, the U.S. Department of Energy is now projecting that 2016 gasoline consumption will be the second-highest ever. We also saw all-time record sales of automobiles last year. And we also saw average fuel economy move backward in 2015, as sales of SUVs and pickups trumped sales of smaller more fuel efficient vehicles. All of this runs counter to the narrative that the RFS needs modification because "gasoline demand is falling" and "people are driving less." Is EPA properly accounting for these trends as it prepares the 2017 proposal?

    Response: Throughout the process of developing the annual volume standards, we conduct extensive outreach and consult with our partners at the U.S. Departments of Energy and Agriculture, and we rely on the most updated data and information available in setting the standards, including the Energy Information Administration's projections of gasoline and diesel fuel demand.

Senator Rounds:

15. Since the Clean Air Act does not explicitly provide for corn ethanol to be part of the RVO totals post-2022, would EPA have the statutory authority to set RVOs for advanced biofuel, plus cellulosic biofuel, plus biomass based diesel that equals the RVO for the total

renewable fuel volume, thus in essence eliminating the blending of conventional corn ethanol as a means to comply with the total renewable fuel requirements under the RFS?

Response: Congress established the RFS volume targets through 2022, and the EPA has not yet begun the process of determining the volume requirements for 2023 and beyond. We therefore cannot speculate as to what shape future policies will take. The law requires that the Administrator, when setting future volume requirements, take into account many analytical factors, including: impacts of the program on the environment (including air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply), energy security, future commercial biofuel production, infrastructure, cost to consumers and the cost to transport goods, and other factors (including job creation, price and supply of agricultural commodities, rural economic development, and food prices).

16. A 2011 National Academy of Sciences report found that the RFS may be an ineffective policy for reducing greenhouse gas emissions. A 2014 Environmental Working Group Study found that corn ethanol actually produces more GHG emissions than neat gasoline. Further, the EPA inspector general is close to completing a report on the lifecycle environmental impacts of the RFS through which they will determine whether the EPA is using the most current science in its life cycle analysis for setting renewable standards. What impact do these studies have on decisions the EPA may make post-2022 in determining what fuels to prioritize and what role does corn ethanol play in your agency's goals of reducing GHG emissions?

Response: Congress established the RFS volume targets through 2022, and the EPA has not yet begun the process of determining the volume requirements for 2023 and beyond. We therefore cannot speculate as to what shape future policies will take. The law requires that the Administrator, when setting future volume requirements, take into account many analytical factors, including: impacts of the program on the environment (including air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply), energy security, future commercial biofuel production, infrastructure, cost to consumers and the cost to transport goods, and other factors (including job creation, price and supply of agricultural commodities, rural economic development, and food prices).

We note that while there has been new analysis and data that suggest GHG emissions for certain biofuel pathways are higher than we estimated, there has been other analysis that suggests the GHG emissions are lower than we estimated. This area of research is still controversial, and there is no more consensus now than when we did our analysis of major biofuel production pathways in 2010. Our methodology has undergone extensive review as part of the rulemaking process, and we believe our analysis is robust. Furthermore, any changes to our analysis or methodology would have a limited impact on the program, since most of the volumes of biofuels being produced would still qualify under the grandfathering provisions established by Congress.

Senator Wicker:

17. At the hearing, Ms. McCabe said that the EPA, in consultation with DOE, has continued to grant small refinery hardship waivers. For those that were denied, was the denial based on their profitability? Have you implemented a new hardship standard by which you are denying hardship relief to refineries that remain profitable even if they have a disproportionate regulatory burden -- like producing more diesel than the national average and lower refining margins?

    Response: The EPA continues to evaluate petitions from small refineries for exemption from RFS requirements and continues to consult with DOE as required by statute. Per CAA section 211(o)(9)(B)(ii), the EPA may extend a refinery's exemption if it determines, after consulting with DOE, considering the findings of a DOE study required under 211(o)(9)(A)(ii)(I), and other economic factors, that the small refinery will suffer "disproportionate economic hardship" from complying with its RFS obligations. The EPA reviews petitions on a case-by-case basis. The fundamental evaluation process the EPA follows has not changed.

18. I am sure you are aware of the language included in the omnibus appropriations bill last year restating Congressional intent regarding small refiner hardship. Can you please tell me how the EPA intends to apply that to small refiner hardship petitions going forward?

    Response: The language, which was included in an explanatory statement accompanying the 2016 Consolidated Appropriations Act, was directed to DOE and offers guidance to DOE about how DOE should develop and provide recommendations to the EPA in its evaluation of small refinery petitions. The EPA will continue to consult with DOE in evaluating these petitions, as required by the statute and will continue to consider DOE's recommendation along with other input and information for each petitioning refinery on a case-by-case basis.

19. For hardship petitions submitted this year, will you follow the 90 day time clock for a response?

    Response: Yes, the EPA intends to respond to each small refinery petition seeking relief from the 2014-2016 standards within 90 days of receiving all the information necessary to conduct the evaluation.

Incoming For: 16-000-5031

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

February 29, 2016

Ms. Jane Nishida
Principal Deputy Assistant Administrator for the Office of International and Tribal Affairs
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Ms. Nishida,

Thank you for your testimony during our June 11, 2015 hearing and for answering questions for the hearing record subsequently submitted by members of the U.S. Senate Environment and Public Works Committee. In order to evaluate your nomination, we are submitting one further question from Senator Mike Rounds:

> "Ms. Nashida, all too often the tribes in my state have great difficulty in obtaining responses from US Government agencies. Can you please provide us with your views on tribal consultation from your position at EPA?"

We appreciate your cooperation and should you have any additional questions please direct your staff to contact Ryan Jackson (EPW Majority) at 202-224-6176 or Mandy Tharp (Senator Rounds) at 202-224-5842.

Sincerely,

JAMES M. INHOFE
Chairman

MIKE ROUNDS
U.S. Senator

16-000-5031

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 22 2016

Office of
International and
Tribal Affairs

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of February 29, 2016, regarding the Environmental Protection Agency's consultation with federally recognized tribes. As Principal Deputy Assistant Administrator of the Office of International and Tribal Affairs (OITA), I am the EPA designated Tribal consultation official as defined in Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments. I take this responsibility very seriously and if confirmed as the Assistant Administrator for OITA, I will continue to prioritize the importance of tribal consultation across the agency.

The EPA Policy on Consultation and Coordination with Indian Tribes (Consultation Policy) establishes a clear process for the agency's tribal consultation. The Consultation Policy defines when and how consultation takes place, promotes consistency and coordination, and establishes management oversight to ensure accountability and transparency. The Consultation Policy directs the EPA to consult on a government-to-government basis when agency actions and decisions might affect tribes or tribal interests. The Consultation Policy defines consultation as a process of meaningful communication and coordination between the agency and tribal officials prior to the EPA taking actions or making decisions. It calls on the EPA to follow up with tribes to explain how their input through consultation was considered in the agency's final action.

The EPA adopted the Consultation Policy in 2011 after extensive nationwide consultation with tribes. The agency has seen marked improvement in the frequency and quality of our consultation and coordination activities with tribal governments. Tribal consultation has improved both the efficiency and the effectiveness of the EPA's program delivery for tribes. I am also proud to say that, under my leadership, the Office of International and Tribal Affairs oversaw the issuance of the *EPA Guidance on Discussing Tribal Treaty Rights* in February of this year. This guidance, which complements the Consultation Policy, outlines a process to help navigate treaty rights discussions during the agency tribal consultations.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Christina Moody in the EPA's Office of Congressional and Intergovernmental Relations at moody.christina@epa.gov or 202-564-0260.

Sincerely,

Jane Nishida
Principal Deputy Assistant Administrator